said that they had not had an opportunity of seeing the whole page of the day book which has been photographed and is now attached to the plaint as exhibit "N". I am at a loss to understand why the necessary steps were not taken to obtain inspection of the whole day book or, at any rate, other items in it which they now say are material. It seems to me that it cannot be said that material evidence has been obtained since the judgment which could not have been previously procured in the previous action.

I cannot find anything in the plaint which, if true, would substantiate a charge of fraud other than the allegations of forgery and perjury. In these circumstances, so far as the first defendant is concerned, the application must succeed and the suit must be dismissed with costs on the grounds put forward in the Notice of Motion.

The position of the second defendant I find somewhat difficult. It may be that the plaintiffs could not succeed against the second defendant without the first defendant being a party to the Suit and it is a little difficult to discover from the amended plaint what they are claiming against him if the plaintiffs cannot succeed against the first defendant. However that may be, although he entered an appearance after the plaint was amended, he has made no application for the plaint to be struck out as against him. He is, in fact, not a party to the present application. In these circumstances I feel that I cannot make any order in this case so far as he is concerned.

Order accordingly.

Solicitors: *K. Chelvanayagam; Braddell & Ramani.*

LEE CHING SENG v. PUBLIC PROSECUTOR.

[A. Cr. J. (Buhagiar J.) August 2, 1954]
[Ipoh — Criminal Appeal No. 63 of 1954]

Common Gaming Houses Ordinance, 1953, s. 4(1)(b) — Occupier permitting premises to be used as a common gaming house by others — Presumption under s. 19 — Entry "under the Ordinance" — Mischief of a common gaming house.

A gazetted Senior Police Officer under the Common Gaming Houses Ordinance acting on information received, together with two police constables, raided premises in Ipoh where the appellant was found together with eleven other persons. There were also found in the said premises documents relating to 100, 1,000, and 10,000 characters lotteries. There was no evidence that there was written information on oath as provided by s. 16 of the Common Gaming Houses Ordinance or that the entry and search was effected as a result of a search warrant issued as provided by s. 18(1) of the Ordinance or that in default of such warrant, any of the circumstances set out in paragraphs (a), (b), (c) and (d) of the same sub-section were fulfilled.

The learned Magistrate found the appellant guilty under s. 4(1)(b) of the Ordinance and sentenced him to 4 months rigorous imprisonment and fined him $4,000 or in default of payment thereof to undergo a further term of 4 months rigorous imprisonment.

Held on appeal: (1) the presumption under s. 19 of the Common Gaming Houses Ordinance can only arise when premises have been entered under the Ordinance; (2) the mere fact that there is no evidence of entry "under the Ordinance" does not prevent evidence of the finding of instruments or appliances of gaming found therein being given and a conviction being obtained — the absence of such evidence only prevents the presumption that a house is a common gaming house arising so that the onus of proving this by evidence remains on the prosecution; (3) the fact that "instruments and appliances for gaming" are found in a place is not sufficient by itself to make that place a common gaming house — it is only in the case specified in the Ordinance that is, where lottery tickets are for sale, sold or distributed that a place is to be deemed to be "used for the purpose of a public lottery" and thereby becomes a common gaming house.

Case referred to:—

(1) *Regina v. Tan Yok Lan & Ors.* 4 Ky. 668.

CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

M. Garton (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Buhagiar J.: — The appellant was charged in the Ipoh Magistrate's Court that he on the 19th day of January, 1954, at about 5.15 p.m. at No. 1 Jacaranda Avenue, Pasir Puteh, Ipoh, being the occupier of the said premises, did allow same to be used as a common gaming house by others and that he had thereby committed an offence punishable under section 4(1)(b) of the Common Gaming Houses Ordinance, 1953 (No. 26 of 1953). He was found guilty of this offence and sentenced to 4 months rigorous imprisonment and ordered to pay a fine of $4,000 or in default of payment thereof to undergo a further term of 4 months rigorous imprisonment.

The facts briefly are these. On the 19th January, 1954, Police Inspector Goh Swee Cheang (who is gazetted as a Senior Police Officer under the Common Gaming Houses Ordinance, 1953) acting on information received, together with two police constables, raided at about 5.15 p.m. premises at No. 1 Jacaranda Avenue, Pasir Puteh, Ipoh. The appellant was found in the said premises together with eleven other persons. There were also found in the said premises, *inter alia*, documents relating to 100, 1,000 and 10,000 characters lotteries. There is no evidence that there was written information on oath as provided by section 16 of the Common Gaming Houses Ordinance, 1953, or that the entry and search was effected as a result of a search warrant issued as provided by section 18(1) of the said Ordinance or that, in default of such warrant, any of the circumstances set out in paragraphs (a),

(b), (c) and (d) of the same sub-section were fulfilled.

The first ground of appeal was that in default of such evidence the presumption under section 19 of the said Ordinance cannot arise. I agree with this submission. That presumption can arise only when premises have been entered *under the Ordinance*. Before the presumption can arise there must be proof of how the entry was made. *Regina v. Tan Yok Lan & Ors.*[1] is authority for this proposition — see also Indian cases referred to in *Braddell's Common Gaming Houses* at pages 41 and 42.

But the mere fact that there is no evidence of entry "under the Ordjnance" does not prevent evidence of the finding of instruments or appliances of gaming found therein being given and a conviction being obtained; the absence of such evidence only prevents the presumption that a house is a gaming house arising so that the onus of proving this by evidence remains on the prosecution.

Now by statutory definition (section 2(1) of the Ordinance) the expression "instruments and appliances for gaming" includes all articles which are used in or for the purpose of gaming or a lottery, and there is no doubt therefore that the documents which are exhibits in this case and which have been proved to relate to 100, 1,000 and 10,000 characters lotteries are "instruments and appliances for gaming." But the fact that "instruments and appliances for gaming" are found in a place is not sufficient by itself to make that place a common gaming house. Under sub-section (1) of section 2 of the Ordinance, the expression "common gaming house" includes "any place kept or used for the purposes of a public lottery" and under the same sub-section "a place in which lottery tickets are offered for sale, sold or distributed shall be deemed to be 'used for the purpose of a public lottery' ". The learned Deputy Public Prosecutor submitted that the latter definition is not exhaustive and that a place is to be deemed to be "used for the purpose of a public lottery" not only when lottery tickets are "offered for sale" or "sold" or "distributed" but also when anything else connected with a public lottery is done in such place. I do not agree with this submission; it is clear from that definition that it is only in the case therein specified that a place is to be deemed to be "used for the purpose of a public lottery"; this becomes clearer still when the phrase "used for the purpose of a public lottery" is related to the definition of "common gaming house", which is the only context in which that phrase appears. As Sir Roland Braddell points out in his "*Common Gaming Houses*" at page 7 :—

> "The mischief of a common gaming house is the same as that of any public nuisance of a like nature, namely, that it is a great temptation to idleness and apt to draw together great numbers of disorderly persons. The essential element of the offence is the public scandal, disorder and inconvenience caused by keeping them."

A place in which lottery tickets are offered for sale, or sold or distributed is such a mischief and has therefore been included in the definition of "common gaming houses."

In the present case there is no evidence that the documents found on the premises were "tickets" — there is evidence that some of the documents are counterfoils — and what is more important there is no evidence that lottery tickets were being offered for sale or sold or distributed in the premises in question. The appellant was originally charged with assisting in carrying on 100, 1,000 and 10,000 characters lotteries an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953; but for some reason which is not clear to me this charge was amended to a charge under section 4(1)(b).

For the reasons set out above the appeal must succeed. The order of conviction and sentence must be set aside. The appellant is discharged and acquitted.

The fine, if paid, is to be refunded.

Appeal allowed.

LOW KWONG HENG v. REGINA.

[A. Cr. J. (Spenser Wilkinson J.) August 6, 1954]
[Penang — Criminal Appeal No. 20 of 1954]

Criminal law and Procedure — Criminal trial — Joinder of charges — Charges sufficiently connected by reason of nature of articles to fall within the provisions of Criminal Procedure Code (Cap. 21), s. 175(1).

The accused was originally charged with the possession of raw opium in his car as one charge and the possession of prepared opium in his car as a second charge. To these two charges were added a third charge in respect of utensils found in accused's house and a fourth charge relating to prepared opium found in the house.

Held: in substance there was one act of possession in respect of four different items and the charges were sufficiently connected by reason of the nature of articles to fall within the provisions of s. 175(1) of the Criminal Procedure Code.

CRIMINAL APPEAL.

Nancy Yeap for the appellant.

J. D. Peterkin (Federal Counsel) for the respondent.

The facts appear sufficiently from the judgment below.